# National Labor Relations Board Re-Affirms Employer Right to Maintain Workplace Email Integrity

Jun 05 2020

Practice Area: Labor and Employment

As many employers are aware, the National Labor Relations Board (the "Board") has held that an employer has the right to maintain common-sense workplace rules regarding use of company email systems. In the Board's *Caesar's Entertainment* decision, employers were allowed to lawfully prohibit employee non-work use of their IT and email systems, except in limited circumstances where employees would otherwise have no other reasonable means of communicating with each other, or if there is proof of discrimination.

The *Caesar's Entertainment* decision overruled a prior case, which granted employees the right to use an employer's electronic communications systems to solicit co-workers for organizing purposes in the workplace.

**The T-Mobile Decision**
In *T-Mobile USA, Inc.*, 369 NLRB No. 90 (May 27, 2020), the Board found that the company properly announced and implemented a workplace rule prohibiting employees from using its email systems for non-work purposes. In finding that the company legally implemented this rule, the Board noted that under the analysis set forth in *Caesar's Entertainment*, the company was entitled to exercise its property rights to restrict the employee's use of its email systems to business and work-related purposes only. The Board further found that employees already had an adequate and effective means of communicating with each other without the use of the company's email system, including oral solicitation during non-working time, and access to smartphones, social media, and personal email accounts outside of working time. The Board held that the company was entitled to implement its workplace rules restricting use of email because they were promulgated in response to an employee's impermissible use of its email system, and not because the employee engaged in any protected activity.

**What these Decisions Means for Employers**
The *T-Mobile* decision provides clear guidance that the Board will apply *Caesar's Entertainment* consistently and fairly in the future to allow employers to make sure their email and IT systems are used for work. Therefore, employers may implement, maintain and enforce rules restricting use of their email and other electronic communications systems to business and work-related purposes only, except in rare and unusual circumstances where there is no other reasonable means of communications between employees.

Employers should evaluate and assess current employee handbooks, policies, and procedures to maintain the integrity of their electronic communication systems, including:

- Preserve and protect the employer's right to control email and IT systems;
- Restrict email and IT systems to business and work-related purposes only;
- Properly document these rules through adequate and consistent enforcement;
- Communicate any updated rules to employees;
- Monitor email and IT systems to ensure compliance;
- Avoid potential issues related with disparate and discriminatory enforcement of email usage rules; and
- If an employer has a currently pending matter before the Board involving an allegation of unlawful workplace rules, it should consult with counsel to determine how these decisions will affect the case.

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